IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 123 of 1992

Mysore Sinivas Gopal
being an Indian Inhabitant
residing at 392/1, Tulsi Vihar
8th Road, Chembur
Bombay 400 071 ..Plaintiff

vs.

1. Shipping Corpn.of India Ltd.
having its registered office
at Shipping House,
245, Madam Cama Road
Bombay 400 021

2. P.P.Radhakrishnan
Chairman & Managing Director
Shipping Corpn.of India
Shipping House, 245, Madam Cama
Road, Bombay 400 021

3. The Central Buireau of
Investigation, having its
office at Tanna House
11-A, Nathalal Parekh Marg
Bombay 400 039 ..Respondents

Shri Susheel Mahadeshwar for petitioner.
Shri S.K.Talsania i/b Mulla & Mulla for
respondents.

CORAM: A.P.SHAH &
S.J.VAZIFDAR JJ.
14th January,2005

ORAL JUDGMENT (Per A.P.Shah J)

1. The petitioner was working as Deputy Manager with the first respondent since 1983. The petitioner was arrested by the officers of C.B.I. on the charge that the petitioner had demanded and

accepted a bribe of Rs.275/- from a cyclostying contractor. No criminal action was initiated against the petitioner, however, departmental enquiry was held against him in which he was found guilty and his services were terminated by order dated 5th August, 1999.

2. Shri Mahadeshwar, learned Counsel appearing for the petitioner, has not pressed the challenge to the order of termination. The only contention raised by Shri Mahadeshwar is that the departmental enquiry was dragged on for almost 6 years and the petitioner was not responsible for the delay and yet he was paid the subsistence allowance only at the rate of 50% of the wages when the petitioner was entitled to subsistence allowance at the rate of full salary. According to Shri Mahadeshwar, there is no provision for payment of subsistence allowance during suspension and, therefore, the petitioner will be entitled to his full emoluments during the period of suspension.

3. We find absolutely no merit in the submission of Shri Mahadeshwar. Shore Officers Service Rules framed by the first respondent specifically contemplates payment of 50% of the wages during suspension. Rule 24 which is material for our

purpose reads as under:

> "24.Suspension, Dismissal etc.: (i) The company may dismiss, or terminate the services of, or suspend or otherwise suitably deal with any Officer who, on inquiry held as provided herein, is adjudged by the Management guilty of misconduct.
>
> (ii)Without prejudice to the generality of the term "Mis-conduct", it shall be deemed to include the following:
>
> (a) Insubordination or disobedience of lawful orders of a superior Officer.
>
> (b) Theft, fraud, or dishonesty in connection with the Company’s business or property.
>
> (c) Unauthorised disclosure, detrimental (in the opinion of the Management) to the Company’s or any Associated Company’s interests, of information concerning financial or trade or policy matter or trade secrets relating to the Company’s business or the business of its Associated Companies

or its or their customers.

(d) Taking bribes or any other form of illegal gratification.

(e) Repeated absence without leave; overstaying the period of sanctioned leave without sufficient cause.

(f) Misrepresentation regarding academic qualifications, birth date or nature of experience at the time of engagement by the Company.

(g) Conviction for an offence involving moral turpitude.

(h) Being adjudged insolvent.

(i) Accepting employment elsewhere whilst still in the Company’s service, without the previous permission of the Management.

(j) Taking another employment or service during the period he is on leave.

(k) Non disclosure by the Officer of his

interest (otherwise than as a shareholder of a Company) in any contract or agreement made by or at the direction of or on the advice of the Officer concerned, in the course of his duties, on behalf of the Company or any Associated Company or participation, in any way, in the profits of such contract or agreement or in any benefit or emolument arising therefrom without the consent of the Company.

(l) Serious misbehaviour with members of the public in connection with the Company's work.

(iii) If any Officer is charged with misconduct, the Management will hold an inquiry into the alleged misconduct and afford the Officer a reasonable opportunity of explaining and defending his actions.

(iv) Any Officer adjudged guilty of misconduct on such inquiry will be liable to be dismissed without notice; if the misconduct is not deemed by the Management sufficiently serious to warrant dismissal, his services may be terminated without

> notice or he may be suspended from duty, for a limited period or may, otherwise be suitably dealt with. An Officer under suspension for any reasons whatsoever will be paid a non recoverable subsistence allowance equal to fifty percent of his basic salary and dearness allowance."
>
> (Emphasis supplied)

On a bare reading of the rule it is seen that the officer under suspension for any reason whatsoever is entitled to be paid subsistence allowance equal to 50% of salary and Dearness Allowance. It is well settled that the authority entitled to appoint the public servant is entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceedings, which may eventually result in a departmental enquiry against him. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or statutory rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. Therefore, the petitioner will be entitled to only 50% of the wages as subsistence allowance.

4. Shri Mahadeshwar contended that rule 24 rule applies only to suspension by punishment and not pending enquiry. We are unable to accept the interpretation suggested by Shri Mahadeshwar. Sub-rule (4) is an independent provision and it clearly provides that if an officer is placed under suspension for any reason whatsoever he will be paid a non recoverable susbistence allowance equal to 50% of the basic salary and dearness allowance. Therefore, the contention of Shri Mahadeshwar that the petitioner will be entitled to full salary cannot be accepted. In the circumstances,no relief can be granted to the petitioner. Petition is dismissed.